



PUBLIC NOTICE

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DA 19-1191
Released: November 18, 2019

MEDIA BUREAU SEEKS COMMENT ON NCTA PETITION FOR CLARIFICATION OF ORDER DENYING MOTION FOR STAY OF SECTION 621 THIRD REPORT AND ORDER

MB Docket No. 05-311

Comment Date: December 6, 2019
Reply Comment Date: December 13, 2019

On November 15, 2019, NCTA – The Internet & Television Association (NCTA) filed a Petition for Clarification¹ of the Media Bureau’s Order Denying Motion for Stay² of the Commission’s Third Report and Order³ in the above-captioned proceeding. In its *Petition*, NCTA requests that the Bureau clarify “certain language in [p]aragraph 21 of the *Stay Denial Order* [that] creates the potential for confusion and the appearance of a conflict with the *Third Report and Order*.”⁴ In particular, NCTA asserts that the Bureau’s statements in paragraph 21 that “[t]he rules in the [*Third Report and Order*] did not supersede provisions in existing franchise agreements on their effective date”⁵ and “[i]f negotiations fail, the terms in the franchise remain in effect unless and until a cable operator challenges those terms and proves that the terms violate the [*Third Report and Order*’s] requirements”⁶ could be interpreted in a way that “conflict[s] with the *Third Report and Order*’s plain directives and require[s] procedures not mandated by the Commission.”⁷ NCTA asks that the Bureau address this apparent conflict with the *Third Report and Order* by removing the relevant statements from the *Stay Denial Order*.⁸

¹ NCTA Petition for Clarification of the Order Denying Motion for Stay, MB Docket No. 05-311, filed Nov. 15, 2019 (*Petition*), available at <https://ecfsapi.fcc.gov/file/1115030634884/2019.11.15%20NCTA%20Petition%20for%20Clarification.pdf>.

² *Implementation of Section 621(a) of the Cable Communications Policy Act of 1984 as Amended by the Cable Television Consumer Protection and Competition Act of 1992*, MB Docket No. 05-311, Order Denying Motion for Stay, DA 19-1149 (MB Nov. 6, 2019) (*Stay Denial Order*).

³ *Implementation of Section 621(a)(1) of the Cable Communications Policy Act of 1984 as Amended by the Cable Television Consumer Protection and Competition Act of 1992*, Third Report and Order, MB Docket No. 05-311, 34 FCC Rcd 6844 (2019) (*Third Report and Order*). The *Third Report and Order* became effective on September 26, 2019. *Effective Date Announced for Rules Governing Franchising Authority Regulation of Cable Operators*, Public Notice, MB Docket No. 05-311, 34 FCC Rcd 7753 (MB 2019).

⁴ *Petition* at 1.

⁵ *Id.* at 4.

⁶ *Id.*

⁷ *Id.* NCTA argues, for example, that these statements in the *Stay Denial Order* could be construed as placing on cable operators the burden to file suit in order to bring existing franchises into compliance with the Cable Act, “thereby absolving franchising authorities of any responsibility to implement the requirements of the *Third Report and Order* in the absence of a court order.” *Id.* at 4-5. NCTA claims that franchising authorities already have begun to interpret the relevant statements in such a manner. *Id.* at 5-6.

⁸ *Id.* at 1, 6. NCTA maintains that in the event of a conflict between the *Third Report and Order* and the *Stay Denial Order*, the former decision governs. *Id.* at 6, n.22.

We issue this Public Notice to seek comment on the *Petition*.⁹ All filings in response to this Public Notice must reference MB Docket No. 05-311. Comments on the *Petition* must be filed by December 6, 2019; reply comments must be filed by December 13, 2019.¹⁰

- Electronic Filers: Comments may be filed electronically using the Internet by accessing the ECFS: <http://apps.fcc.gov/ecfs/>.
- Paper Filers: Parties who choose to file by paper must file an original and one copy of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, filers must submit two additional copies for each additional docket or rulemaking number.

Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

- All hand-delivered or messenger-delivered paper filings for the Commission's Secretary must be delivered to FCC Headquarters at 445 12th St., SW, Room TW-A325, Washington, DC 20554. The filing hours are 8:00 a.m. to 7:00 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes and boxes must be disposed of before entering the building.
- Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9050 Junction Drive, Annapolis Junction, MD 20701.
- U.S. Postal Service first-class, Express, and Priority mail must be addressed to 445 12th Street, SW, Washington DC 20554.

People with Disabilities: To request materials in accessible formats for people with disabilities (braille, large print, electronic files, audio format), send an e-mail to fcc504@fcc.gov or call the Consumer & Governmental Affairs Bureau at 202-418-0530 (voice), 202-418-0432 (tty).

Filings are also available for public inspection and copying during regular business hours at the FCC Reference Information Center, Portals II, 445 12th Street, SW, Room CY-A257, Washington, DC 20554, telephone (202) 418-0270.

This proceeding is treated as a "permit-but-disclose" proceeding in accordance with the Commission's *ex parte* rules.¹¹ Persons making *ex parte* presentations must file a copy of any written presentation or a memorandum summarizing any oral presentation within two business days after the presentation (unless a different deadline applicable to the Sunshine period applies). Persons making oral *ex parte* presentations are reminded that memoranda summarizing the presentation must (1) list all persons attending or otherwise participating in the meeting at which the *ex parte* presentation was made, and (2) summarize all data presented and arguments made during the presentation. If the presentation consisted in whole or in part of the presentation of data or arguments already reflected in the presenter's written comments, memoranda or other filings in the proceeding, the presenter may provide citations to such data or arguments in his or her prior comments, memoranda, or other filings (specifying the relevant page and/or paragraph numbers where such data or arguments can be found) in lieu of summarizing them in the memorandum. Documents shown or given to Commission staff during *ex parte* meetings are deemed to be written *ex parte* presentations and must be filed consistent with rule 1.1206(b). In

⁹ See 47 CFR § 1.2(a), (b) (authorizing the Commission to issue a ruling to "terminat[e] a controversy or remov[e] uncertainty" and directing the relevant Commission bureau or office to seek comment on requests for such rulings via public notice).

¹⁰ See *id.* § 1.2(b) (prescribing default deadlines for pleadings filed in response to petitions for declaratory ruling "[u]nless otherwise specified by the [B]ureau").

¹¹ *Id.* §§ 1.1200 *et seq.*

proceedings governed by rule 1.49(f) or for which the Commission has made available a method of electronic filing, written *ex parte* presentations and memoranda summarizing oral *ex parte* presentations, and all attachments thereto, must be filed through the electronic comment filing system available for that proceeding, and must be filed in their native format (*e.g.*, .doc, .xml, .ppt, searchable .pdf). Participants in this proceeding should familiarize themselves with the Commission's *ex parte* rules.

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